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EXAMINER

RUTTEN, JAMES D

ART UNIT	PAPER NUMBER
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2192

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/817,880	TROWBRIDGE, SEAN E.	
	Examiner	Art Unit	
	J. Derek Rutten	2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/26/05 has been entered, wherein claims 1, 11, 20, 28, 30, 32, and 33 have been amended. Claims 1-33 remain pending and have been fully considered by the examiner.

Response to Amendments/Arguments

2. Applicant argues on page 8 of the reply filed 10/26/05 that the original oath *was not* defective since invocation of 37 CFR 1.56(a) contains the phrase “material to patentability as defined in this section”. Applicant essentially argues that this phrase “results in an oath or declaration to all paragraphs of section of [sic] 37 C.F.R § 1.56” and that “the person making the oath or declaration has acknowledged such duty ...”. In light of these arguments, the original declaration is considered effective and the objection is withdrawn.

3. Applicant argues at the bottom of page 8 that claim 35 has been amended to comply with the enablement requirement. This is understood to be a typo that instead should refer to the amendment of claim 32 which has corrected prior deficiencies. Thus the rejection is withdrawn.

4. On pages 9 and 10, Applicant addresses the rejection of claims 20-22 and 27-29 under 35 U.S.C. § 102(e). At the bottom of page 9 through the top of page 10, Applicant essentially argues that the Goodwin reference does not disclose any “code image runtime feedback related

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to a particular user”. This argument is likewise presented on page 12 in response to the rejection of dependent claims 24-26. It is noted that the feature relied upon by Applicant (i.e. “feedback related to a particular user”) is not recited in the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Thus, this argument is not convincing.

5. At the top of page 11, Applicant essentially argues that Breslau and Spyker do not teach “a log to store information relating to an operating environment of the virtual subsystem, the logged information includes at least a set of information to create a native executable according to a particular user, the logged information is employed as feedback to generate a native executable”. Applicant has drawn support from the rejection of claim 11 as presented in the previous Office Action in stating that the Office Action has conceded the deficiency of the prior art. This argument is representative of further arguments presented on pages 11-13 regarding the various rejections of claims 1-10, 12-19, 23-26, and 30-33 under 35 U.S.C. § 103(a). However, as indicated in the previous Office Action, Breslau discloses that logged information includes a set of information to create a native executable. See Figure 3, item 59. Also, new interpretation of Spyker shows that a user can control the creation of a runtime image according to a particular user. See Spyker column 14 lines 44-46. This combination appears to be obvious to combine as presented in the following rejection, thus Applicant’s argument is not convincing.

6. At the bottom of page 11, in regards to the rejection of claim 11, Applicant argues that Breslau, Spyker and Cooligan do not teach “*a log to store information relating to an operating environment of the virtual subsystem, the logged information includes at least a set of*

information to create a native executable according to a particular user, the logged information is employed as feedback to generate a native executable". This argument is moot in view of amendments to claim 11 and the new interpretation of the Spyker reference.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 1-18 and 33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 is directed to a "system for generating specialized executables". However, none of the following claim elements are *necessarily* implemented in hardware. As such, the claim appears to be an arrangement of software, per se, and is therefore not tangible. The claim should include at least one element of a system that is *necessarily* implemented as a tangible element. Claims 2-18 are dependent upon claim 1, and do not satisfy any deficiencies therein.

9. Claims 19, and 30-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 19 is directed to a "computer-readable medium". However, this medium is not limited to tangible embodiments. A description of computer readable media can be found on page 12 line 21 – page 13 line 5. While this description includes tangible embodiments such as a hard disk, magnetic disk, and CD, page 13 lines 1-5 expressly envisions media to include "other types of media readable by a computer". However, wireless media could be read by a computer, but are considered to be a form of electro-magnetic signal, which appears to be non-statutory. Claims 30 and 31 are drawn to a "signal". However, as seen

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in the limitations of claim 31, a “signal” could be interpreted to include wireless, or electromagnetic signals which appear to be nonstatutory. Claim 32 is drawn to “computer-readable means” which draws support from page 12 line 21 – page 13 line 5 as cited above. Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena. O’Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in § 101. For further information, see Official Gazette, Nov. 22, 2005, 1300 OG 142, “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility”, Annex IV(c), which can be found online at <http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm>.

10. Claim 32 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 32 is drawn to a computer readable means including a data structure comprising three data fields. The clause related to the third data field recites: “a third data field having at least one of an administrative flag and a set of information to create an executable image according to a particular user of a virtual system.” The phrase “at least one of” allows the clause to be interpreted with only one of the claimed “administrative flag” or set of information”. When the claim is interpreted as including only the administrative flag, the wording of the claim then simply recites “a third data field having an administrative flag”. This results in the data structure comprising three fields but does not impart any functionality. Such nonfunctional descriptive material is non-statutory. It appears that this interpretation results

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from somewhat awkward claim language, and would be statutory if claimed in such a way that the data structure is positively recited to create an executable image.

11. Claim 33 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 33 is drawn to a “virtual software system” which is interpreted as a functional descriptive computer program, per se. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program’s functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program’s functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 32 recites: “a third data field having at least one of an administrative flag and a set of information to create an executable image according to a particular user of a virtual system.” While the structure of the clause makes it clear that the “set of information” can be

used “to create an executable image”, it is not clear if the administrative flag could be used in the same manner. For the purpose of further examination, the clause will be interpreted as follows:

*“a third data field having at least one of:
an administrative flag and
a set of information to create an executable image according to a particular user
of a virtual system.”*

Thus, the “administrative flag” is not interpreted as being used to “create an executable image”.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

15. Claims 20-22 and 27-29 are rejected under 35 U.S.C. 102(e) as being anticipated by prior art of record U.S. Patent Number 6,158,049 to Goodwin et al. (hereinafter “Goodwin”).

In regard to Claim 20, Goodwin discloses: determining a first code image associated with a possible runtime environment (Figure 1, item 105 – the determined first code image is the instrumented object code); executing the first code image in an unmodified form in the runtime environment (Figure 2, item 151); and generating runtime feedback associated with the first code image to adjust a subsequent code image according to the runtime environment (Figure 2, items 152 and 107). Goodwin further

discloses feedback that includes a set of information to create a code image (See column 16 lines 14-16 – in particular “profile data files”). Goodwin further discloses creation of an image according to a particular user (column 3 line 53 – column 4 line 60 generally describes the process of creation of an optimized executable image from the perspective of a particular user that enters commands – e.g. column 3 lines 53-54 “command from the user”).

In regard to Claim 21, Goodwin teaches generating a specialized executable from the subsequent code image (Column 4, lines 57-60).

In regard to Claim 22, Goodwin teaches storing the application images in a database (Figure 1, item 107).

In regard to Claim 27, Goodwin teaches at least: organizing data and methods in the first image to optimize the images based on profile data (Column 2, lines 63-67).

In regard to Claims 28 and 29, these are system Claims that correspond with method Claims 20 and 21, and are rejected for the same reasons as Claim 20 and 21 respectively, where Goodwin teaches a system for carrying out said method of Claims 20 and 21 (Figure 1).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 1, 2, 5-17, 19, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over prior art of record U.S. Patent Number 5,761,512 to Breslau et al. (hereinafter “Breslau”) in view of prior art of record U.S. Patent Number 6,571,389 to Spyker et al. (hereinafter “Spyker”), and further in view of “HotSpot: A new breed of virtual machine” by Armstrong (hereinafter “Armstrong”)

In regard to Claim 1, Breslau teaches *a log to store information relating to an operating environment of a system* (Figure 2), *the logged information is employed as feedback to generate a native executable* (Figure 3, item 59). Breslau also discloses that any applicable characteristic can be stored in a log. See column 4 lines 60-64. Breslau does not teach that a loader is used to determine availability, that the system is a virtual subsystem, creation of a native executable according to a particular user, nor that the native executable is utilized to provide improved performance of the virtual subsystem.

However, in an analogous environment, Armstrong teaches *a loader to determine availability of a specialized image that is associated with an operating environment of the virtual subsystem*. See the “Control” block in the figure at the bottom of page 3; also see the top of page 4: “When a method is invoked, the native machine-code version is used, if it exists.” Also in an analogous environment, Spyker teaches generating native executables on a virtual subsystem for improving the performance of the subsystem (Column 1, lines 22-27 and lines 37-44). Spyker further teaches that a user can control the creation of a runtime image (Spyker column 14 lines 44-46).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use Armstrong’s loader with Breslau’s environment log. One

would be motivated to use a loader that checks for specialized images in order to optimize execution time (Armstrong page 4 paragraph 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Spyker's virtual subsystem with Breslau's environment. One of ordinary skill would have been motivated to allow a programming image to be utilized in a number of different environments that support a virtual subsystem. One of ordinary skill would have also been motivated to enable the creation of an executable runtime image according to a user in order to prepare the image for loading and execution at the user's discretion.

In regard to Claim 2, Breslau teaches that the native executable is selected for execution by the virtual subsystem by matching a current environment setting with the logged information (Column 8, lines 22-27).

In regard to Claim 5, Breslau teaches a local data log (Figure 4, item 135).

In regard to Claim 6, Breslau teaches a data log stores 1 through N environment parameter descriptions associated with 1 to N encountered images, wherein N is an integer (Figure 1A).

In regard to Claim 7, Spyker teaches a virtual machine as a virtual subsystem which uses an intermediate code image (Figure 1, lines 22-27 and lines 39-44).

In regard to Claim 8, Spyker teaches a Just-In-Time compilation (Column 1, lines 39-44).

In regard to Claim 9, Spyker teaches that the virtual subsystem generates native platform code (Column 1, lines 39-44).

In regard to Claim 10, Spyker teaches installing or running a generic code image by converting it into a native executable (Column 1, lines 39-44).

In regard to claim 11, Spyker teaches creating a runtime image according to a method of invocation (column 14 lines 48-52).

In regard to Claim 12, Spyker teaches generating a native code image using the virtual machine (Column 1, lines 39-44).

In regard to Claim 13, Breslau teaches an image processor for processing feedback and generating a native executable (Figure 3).

In regard to Claim 14, Breslau teaches that the image processor comprises a compiler (Figure 3, item 59).

In regard to Claim 15, Breslau teaches an image-processing tool to read the logged information and associate one or more environmental settings with one or more related images encountered during virtual subsystem execution (Column 9, lines 43-48).

In regard to Claim 16, Breslau teaches logged information relating to an operating system version and processor type (Figure 2).

In regard to Claim 17, Breslau teaches a system identifier to match parameters with native code (Figure 2, items "SYS A", "SYS B", and "SYS C").

In regard to Claim 19, Breslau teaches a medium (Figure 4) for carrying out said execution of the system in Claim 1.

Claim 30 corresponds with Claim 1, and Claim 30 is rejected for the same reasons as Claim 1, where a signal is an inherent aspect of communication in a data processing system. Spyker's generic image (Java Bytecode) is predetermined to be incompatible

with the operating environment of the virtual system, since bytecode is an intermediate code format that is not directly executable. All further limitations have been addressed in the above rejection of claim 1.

In regard to Claim 31, Spyker teaches that this signal is communicated over a network (Figure 5A, items 506 and 507).

18. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breslau, Spyker, and Armstrong as applied in the above rejection of claims 1, 2, 5-10, 12-17, 19, 30, and 31, and further in view of prior art of record U.S. Patent Number 6,721,946 to Fogarty et al. (hereinafter "Fogarty").

In regard to Claim 3, Breslau and Spyker teach the method of Claim 1, but do not teach an image repository to store 1 through N specialized native images, wherein N is a positive integer. Fogarty, however, does teach an image repository for holding a plurality of software images (Figure 2, item 212). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to build the system of Claim 1, further storing the images in an image repository, since this allows the images to be centrally accessed from one location.

In regard to Claim 4, Fogarty teaches that the image database is a local or remote database (Figure 3, item 212).

19. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Breslau, Spyker, and Armstrong as applied in the above rejection of claims 1, 2, 5-10, 12-17, 19, 30, and 31, and

further in view of prior art of record U.S. Patent Number 6,253,368 to Nelin et al. (hereinafter “Nelin”).

In regard to Claim 18, Breslau and Spyker teach the system of Claim 16, but neither teaches that the developer parameters describe at least one of debug options, compiler switch settings and information relating to preferences of a user. Nelin, however, does teach storing development parameters that deal with user preferences of debug options (Column 15, lines 40-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to build the system of Claim 16, as taught by Breslau and Spyker, where the developer parameters describe at least one of debug options, compiler switch settings and information relating to preferences of a user, as taught by Nelin, since these options are also a field that helps to profile the settings and preferences of a computer system and a user.

20. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goodwin as applied in the above rejection of claim 21, further in view of “Compilers: Principles, Techniques, and Tools” by Aho et al. (hereinafter “Aho”).

In regard to Claim 23, Goodwin teaches processing a generic image using standard compilation techniques (Figure 1, item 102). Goodwin does not expressly teach intermediate language. However, in an analogous environment, Aho teaches processing intermediate language code utilizing standard compilation techniques. See Figure 1.9 on page 10; also pages 12-14. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Aho’s intermediate language with Goodwin’s

compiler. One of ordinary skill would have been motivated to use a language that is easily translated into a target program (see Aho, last full paragraph on page 12).

21. Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodwin and Aho as applied to the rejection of claim 23 above, and further in view of Breslau.

In regard to Claim 24, Goodwin teaches the method of Claim 23, but does not teach logging operating environment information during processing of the generic image. Breslau, however, does teach logging environment variables of a computer system to compile a generic image (Figure 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to perform the method of Claim 23, as taught by Goodwin, where the method includes logging operating environment information during processing of the generic image, as taught by Breslau, since this allows customization of the image to suit the environment.

In regard to Claim 25, Goodwin teaches the method of Claim 23, but does not teach building the specialized executable to suit the environment. Breslau, however, does teach generating an environment specific executable (Column 1, lines 65-67). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to perform the method of Claim 23, as taught by Goodwin, where the method includes building the specialized executable to suit the environment, as taught by Breslau, since this allows customization of the executable to suit the environment.

In regard to Claim 26, Breslau teaches selecting the specialized executable by matching a current environment setting with the logged environment information (Column 8, lines 22-27).

22. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Breslau in view of Spyker further in view of Nelin.

In regard to Claim 32, Breslau teaches a first data field having parameters relating to at least one of an operating system version (Figure 2, item "OS" in SET Table) and a third data field having a set of information to create an executable image (Figure 3, item 59). Breslau does not teach a second data field having at least one of a developer parameter, a domain flag, a security information field, and a binding information field. Breslau also does not teach the creation of an executable image according to a particular user.

Nelin, however, does teach a developer parameter field for debugging programs (Column 15, lines 40-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to construct a data structure containing a first data field having parameters relating to at least one of an operating system version and a third data field having a profile information field associated with the operating environment of a virtual system, as taught by Breslau, where the structure also contains a second data field having a developer parameter, as taught by Nelin, since a developer parameter is also a field that helps to profile the settings and preferences of a computer system and a

user. Also, Spyker teaches creation of a runtime image according to a user (Spyker column 14 lines 44-46), as addressed in the above rejection of claim 1.

23. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Breslau in view of prior art of record U.S. Patent 6,457,122 to Ramezani (hereinafter "Ramezani"), and further in view of Spyker.

In regard to Claim 33, Breslau teaches an execution engine that processes an image (Figure 3), the execution engine generating operating environment data while processing the image (Figure 2), and a specialized executable image generated at least in part from the operating environment data (Figure 3, item 59). Breslau does not teach that the specialized executable image stored in a repository of one or more other specialized executable images wherein the execution engine selects at least one specialized executable image from the repository if the at least one specialized image matches present operating environment data. Breslau also does not disclose the creation of an image according to a user.

Ramezani, however, does teach a specialized image repository (Column 4, lines 54-57); wherein the execution engine selects at least one specialized executable image from the repository if the at least one specialized image matches present operating environment data (Column 5, lines 11-12). Neither Breslau nor Ramezani teach that the image is an intermediate language image. Spyker, however, does teach processing an intermediate language image (Column 1, lines 37-44). Also, Spyker teaches creation of a

runtime image according to a user (Spyker column 14 lines 44-46), as addressed in the above rejection of claim 1.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to build a system including an execution engine that processes an image, the execution engine generating operating environment data while processing the image, and a specialized executable image generated at least in part from the operating environment data, as taught by Breslau, where the specialized executable image stored in a repository of one or more other specialized executable images wherein the execution engine selects at least one specialized executable image from the repository if the at least one specialized image matches present operating environment data, as taught by Ramezani, since this allows for a centralized storage location for all of the images, as well as an image that is designed specifically for a certain operating environment, further where the first image is an intermediate language image, as taught by Spyker, since this allows the image to be executed on any environment that can handle the intermediate language. One of ordinary skill in the art would be motivated to assess software in order to determine if it meets the requirements of the target system (See Ramezani's *Background* section in column 1 lines 23-24).

Conclusion

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,842,897 B1 to Beadle et al. discloses user profile information used

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in the formation of a runtime code image. See column 5 line 66 – column 6 line 12 and Figure 8 element 804.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Derek Rutten whose telephone number is (571) 272-3703. The examiner can normally be reached on T-F 6:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jdr



TUAN DAM
SUPERVISORY PATENT EXAMINER